



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

PATRICK LAMAR HARRIS, §  
§  
Petitioner, §  
§  
v. § CIVIL ACTION NO. 3:04-0100-HFF-JRM  
§  
GERALDO MALDONADO JR., Warden; and §  
JOHN ASHCROFT, The United States Attorney §  
General, §  
§  
Respondents. §

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ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE MAGISTRATE  
JUDGE AND DISMISSING THE ACTION *WITHOUT PREJUDICE AND WITHOUT*  
*SERVICE ON RESPONDENTS*

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This case was filed as a Section 2241 action. Petitioner is proceeding *pro se*. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the Court dismiss the petition for a writ of *habeas corpus without prejudice* and without service on Respondents.

**II. STANDARD OF REVIEW**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo*

determination of those portions of the Report to which specific objection is made; and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on May 4, 2004, and Petitioner filed his objections to the Report on May 21, 2004. Petitioner also filed amended objections on June 3, 2004.

### **III. PETITIONER'S OBJECTIONS**

#### *A. Review of Fourth Circuit Court of Appeals*

Two of Petitioner's objections concern decisions rendered by the Court of Appeals for the Fourth Circuit. Simply stated, and as observed by the Magistrate Judge, it is not the province of this Court "to review a decision of the court of appeals of its circuit . . . to ascertain if error exists, or to correct any error. In such a case, a petitioner must address a request for relief to the court of appeals or the Supreme Court." Report at 5. Accordingly, these objections will be overruled.

#### *B. 21 U.S.C. § 841.*

Petitioner next argues that the trial court erred in its interpretation and application of 21 U.S.C. § 841. For the reasons set forth in the Report, however, this Court finds that Petitioner's claim is inappropriate. Thus, the Court will enter judgment accordingly.

#### *C. Other objections*

To the extent that Petitioner makes *United States v. Booker*, 543 U.S. 220 (2005) and *Blakely v. Washington*, 542 U.S. 296 (2004) type arguments, those objections will be overruled. The rule set forth in those cases is unavailable for post-conviction relief for federal prisoners, like Petitioner, whose convictions became final before *Booker* or *Blakely* was decided.

#### **IV. CONCLUSION**

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court overrules Petitioner's objections, adopts the Report, and incorporates it herein. Accordingly, it is the judgment of this Court that the petition must be **DISMISSED** *without prejudice* and without service upon Respondents.

#### **IT IS SO ORDERED.**

Signed this 10<sup>th</sup> day of January, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

#### **NOTICE OF RIGHT TO APPEAL**

Petitioner is hereby notified that he has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.